to Justice Act.5/ Further review of this fact-bound issue is not warranted.

3. Inchausti's additional argument (J.S. 11-12) that "special circumstances" may make an award of fees appropriate even if the position of the United States was "substantially justified" turns the statute on its head. The "special circumstances" exception in 28 U.S.C. (Supp. V) 2412(d) (see page 5 note 2, supra) was enacted to relieve the government of liability for fees in otherwise appropriate cases, not to enable ineligible claimants to obtain fees. As the Senate Report explained (S. Rep. 96-253, 96th Cong., 1st Sess. 7 (1979)):

> This "safety valve" helps to insure that the Government is not deterred from advancing in good faith the novel but credible extensions and interpretations of the law that often underlie vigorous enforcement efforts. It also gives the court discretion to deny awards where equitable considerations dictate an award should not be made.

Inchausti's attempt to up-end the government's "safety valve" is thus flatly contradicted by the statute and its legislative history.

Inchausti's suggestion that what would otherwise be the correct reading of the statute "is not justified when the government is dealing with a weaker party" (J.S. 11) proves too much. By the very terms of the Act (see 28 U.S.C. (Supp. V) 2412(d)(2)(B)), any party eligible for fees will be "weaker" and less able to bear the costs of litigation than the United States. But this disparity alone is not sufficient justification for an award of fees; if it were, the Act's prevailing party requirement and the government's "substantial justification" and "special circumstances" defenses all would be superfluous.

5/ If Inchausti is seeking attorney's fees for services rendered in the administrative proceedings that preceded the litigation, her claim also is without merit. Administrative proceedings under the Social Security Act are not covered by the EAJA. See Guthrie v. Schweiker, 718 F.2d 104, 107, 108 (4th Cir. 1983); Berman v. Schweiker, 713 F.2d 1290, 1293, 1296 (7th Cir. 1983).

Nor is it significant that in "lengthy litigation reasonable attorney's fees could exceed several times the amount awarded to a party by a favorable judgment" (J.S. 11). The statute is intended to compensate small entities and individuals for attorney's fees incurred in litigating against the government only when the position of the government is wholly without merit; the length of the proceedings is, as an abstract matter, simply irrelevant to that determination.6/

Inchausti cites no support in the Act, its legislative history, or the case law for the novel argument she advances. Since the EAJA is a waiver of sovereign immunity, courts may not ignore the entitlement standards established by Congress whenever the poverty of the claimant would seem to make an attorney's fee award "just." Cf. Ruckelshaus v. Sierra Club, No. 82-242 (July 1, 1983).7/

6/ We note that Congress has addressed Inchausti's concern by providing that attorney's fees awarded under certain social security programs may not exceed 25% of past-due benefits. See 42 U.S.C. 406(b), 139511.

7/ The court of appeals was satisfied that the government's position was "substantially justified," and thus it did not reach the other issues potentially involved, viz., the timeliness of the fee application, the applicability of EAJA to this case, and the status of appellant as a prevailing party. Because the court's ruling on the substantial justification question is dispositive of the fee request, we likewise see no need to address these other issues. See Amidon v. Lehman, No. 82-2028, (4th Cir. Jan. 13, 1984), slip op. 3.

CONCLUSION

The appeal should be dismissed for lack of jurisdiction. Treating the appeal as a petition for a writ of certiorari, the petition should be denied.

Respectfully submitted.

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